

Initial Statement of Reasons

Adoption of Proposed Amendments to
California Code of Regulations, Title 18, Section 1807,
Petitions for Reallocation of Local Tax, and
Section 1828, *Petitions for Distribution or Redistribution of*
Transactions and Use Tax

SPECIFIC PURPOSE AND NECESSITY

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code (RTC) § 7200 et seq.), and all of California's counties have adopted ordinances under the terms of this law. (RTC § 7201.) Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the State Board of Equalization (Board) to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC § 7209) and California Code of Regulations, title 18, section (Regulation) 1807, *Petitions for Reallocation of Local Tax*, prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law (RTC §7251 et seq.). The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC §7269) and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Klehs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed

his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website.

At the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board agreed with Board staff, Mr. Klehs, the HdL Companies, and MuniServices, LLC that the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation improved the review processes prescribed by both regulations and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 11-004, the Informal Issue Paper dated August 10, 2011, the exhibits to the formal issue paper and informal issue paper, and comments made during the Board's discussion of the formal issue paper and informal issue paper during its April 26, 2011, and August 23, 2011, Business Taxes Committee meetings, respectively, in deciding to propose the amendments to Regulations 1807 and 1828 described above.

ALTERNATIVES CONSIDERED

The Board considered four alternatives to the proposed amendments to Regulations 1807 and 1828 during its April 26, 2011, Business Taxes Committee meeting, which are described in detail in Formal Issue Paper 11-004. Alternative 1 was recommended by Board staff, alternative 2 was recommended by Mr. Klehs and supported by the HdL Companies, and alternatives 3 and 4 were recommended by MuniServices, LLC.

All four alternatives recommended that Regulations 1807 and 1828 be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written

objection to a notification of misallocation; (2) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (3) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (4) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Therefore, all of these amendments were included in staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, and the Board voted to propose these amendments to Regulations 1807 and 1828 at the conclusion of its August 23, 2011, Business Taxes Committee meeting.

Alternative 1 recommended that the Board amend Regulations 1807 and 1828 to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 90 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within six months after receiving a timely written object to its original decision. Alternatives 2 recommend that the Board amend Regulations 1807 and 1828 to require the Allocation Group to consider an objection to its original decision on a petition and issue a supplemental decision on the petition within 90 days. Alternatives 3 and 4 recommended that the Board amend the regulations to require that the Allocation Group complete any supplemental investigation within 90 days after the Allocation Group receives an objection to its original decision on a petition and then meet and confer with the parties. Alternatives 3 and 4 also recommended that the amendments to both regulations allow a jurisdiction or district to request, any time after the parties meet and confer, that the Allocation Group issue its supplemental decision on a petition within 30 days after receiving such request and based upon the information in the Allocation Group's possession. The similar procedures embodied in the four alternatives regarding the issuance of supplemental decisions were combined into staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, that both regulations be amended to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written object to its original decision. The interested parties subsequently concurred with staff's revised recommendation, except that MuniServices, LLC, recommend that staff change 60 days to 30 days. The Board voted to propose the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation because, in some cases, the Allocation Group does need 60 days to prepare its supplemental decisions.

Alternative 1 also recommended that the Board amend the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to clarify that the 2002 versions of the regulations were repealed and new versions of the regulations were adopted in 2008, clarify the effect of the adoption of the 2008 regulations on petitions

filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the regulations apply to procedures occurring after their effective dates and are not retroactive. Alternative 3 recommended that the Board adopt Regulations 1807.1 and 1828.1 containing the provisions of Regulations 1807 and 1828 as recommended to be amended in alternative 3, and amend Regulations 1807 and 1828 so that they cease to be operative when Regulations 1807.1 and 1828.1 become operative in order to make it clear that the provisions of new Regulations 1807.1 and 1828.1 are not retroactive. Alternative 4 simply recommended amending Regulations 1807 and 1828 to provide that the 2011 amendments have no retroactive effect. In its revised recommendation in the Informal Issue Paper dated August 10, 2011, Board staff continued to recommend that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be clarified as originally recommended by staff in alternative 1. However, MuniServices, LLC, recommend that the transition rules be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. The Board voted to propose to amend the transition rules in the manner recommended by staff because the Board agreed that staff's recommended amendments were consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations, and the Board determined that staff's recommended amendments clarified the regulations' existing transition rules without creating unnecessary confusion.

Alternative 2 also recommended that the Board amend Regulations 1807 and 1828 to: (1) limit the time the Allocation Group has to prepare a second supplement decision after it receives an objection to its original supplemental decision; (2) require the Appeals Division to schedule an appeals conference within six months after receiving a petition file from the Allocation Group, and require the Appeals Division to schedule an appeals conference within 90 days after the Board receives an objection to a second supplemental decision; (3) reduce the additional time the Board's Chief Counsel can grant the Appeals Division to prepare its Decision and Recommendation (D&R) regarding a petition to 30 days; (4) eliminate the procedures for the parties to a petition to request that the Appeals Division reconsider its D&R and issue a Supplemental D&R; and (5) require the Board to issue a notice of hearing within 90 days after a party to a petition files a timely request for a Board hearing. The Board did not vote on whether to propose any of these amendments because they were no longer being recommended by Mr. Klehs or the HdL Companies at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

Alternatives 3 and 4 also recommended that the Board amend Regulations 1807 and 1828 to: (1) impose a 270-day limit on the Allocation Group's initial investigation of a petition, require the Allocation Group to meet and confer with the petitioner regarding the status of its investigation if it has not issued a decision on the petition within that period, and allow the petitioner to request that the Allocation Group issue its decision within 30 days after it has met and conferred with the petitioner without regard to the status of the investigation; (2) prohibit an appeals conference holder from accepting post-conference submissions outside of the 30-day periods provided in the regulation, except upon the agreement of all the parties to a petition; and (3) require a party to a petition to provide a justification as to why that party is presenting new evidence to the Board prior to a Board

hearing that was not previously provided during the Appeals Conference process, and require the Board to rule on the admissibility of the new evidence based upon such justification, at least 75 days prior to the Board hearing. The Board did not vote on whether to propose any of these amendments because they were no longer being recommended by MuniServices, LLC, at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

No reasonable alternative to the proposed amendments to Regulations 1807 and 1828 has been brought to the Board's attention that would be as effective in carrying out the purposes for which the amendments are proposed and that would lessen any adverse impact on small business, if any, from the proposed regulatory action and the Board has not rejected any such alternative.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant adverse economic impact on business, including small business.

The proposed regulation may affect small business.